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C O N F I D E N T I A L SECTION 01 OF 03 NEW DELHI 000238

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E.O. 12958: DECL: 02/09/2019

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SUBJECT: BILLION INDIAN VOICES: ELECTION COMMISSION ROW
INTENSIFIES

REF: 2008 NEW DELHI 1431

Classified By: Acting Political Counselor Les Viguerie for Reasons 1.4
(B and D)

11. (C) SUMMARY: The Bharatiya Janata Party (BJP) has now seconded calls by the Chief Election Commissioner to remove one of his colleagues from the three-member Election Commission. This spat is allegedly based on the targeted Election Commissioner's close ties to the Congress Party, but Congress and Left parties have questioned the legality and timing of the recommendation - two months before the Chief Commissioner's general elections and 78-days before retirement from government service. We doubt that the charges will cause any lasting damage for the Congress Party. However, the controversy and the partisan appointment of election commissioners could threaten the credibility of the Commission and the elections that it oversees, thus casting a dark shadow on the Indian elections process. END SUMMARY.

Simmering Tensions Boil Over

12. (SBU) In a move that id not become public until January 30, Chief of Election Commission (CEC) N. Gopalaswami wrote a letter to President Pratibha Patil on January 15 seeking fellow Election Commissioner Navin Chawla's removal. The CEC raised "twelve points of biased conduct," where Chawla allegedly influenced internal decisions to favor the United Progressive Alliance (UPA) government. These included: the timing of Karnataka and Punjab state assembly elections in 2007, the non-issuance of notice to Congress leaders for unethical behavior during Gujarat elections, and the non-issuance of notice to Sonia Gandhi for accepting the Belgian Government's Order of Leopold honor. Tensions between the two commissioners had been simmering since Chawla's appointment to the Commission in 2005. Over a year ago, the CEC accepted a petition filed by the BJP that accused Chawla of bias (Ref. A). The media only picked up the story when President Patil forwarded the CEC's letter to the Prime Minister's office. BJP leaders urged immediate GOI action on the CEC's request alleging that the "credibility" of the election panel was "at stake."

13. (U) The Congress Party and Left have questioned the

legality and timing of the CEC's recommendation. They have raised concerns about the CEC's motive, pointing to the strategic timing of his recommendation just two months before Lok Sabha polls and 78-days before his retirement from post. They have also argued that the Indian Constitution does not give the CEC "suo moto" ("on it's own merit" or independent) authority to recommend the removal of an election commissioner.

The GOI Responds: You're Not a Boss

¶4. (SBU) Gopalaswami came under criticism from Indian Law Minister H.R. Bhardwaj, who also asserted that the CEC did not have authority to recommend Chawla's dismissal. Referring to the 1995 Supreme Court opinion on Article 324 of the Indian Constitution, which defines the powers and functions of the Election Commission (EC), he clarified that the CEC is the administrative head of the EC and "not a boss." Bhardwaj further stated that the CEC does not have constitutional authority to "embarrass or comment upon the performance of his colleague (Chawla) because they are equals." He stated that the senior-most of the three-member election commissioner would serve as Chief, indicating that Chawla would rise to the position after Gopalaswami's retirement from post on April 20.

¶5. (SBU) Bhardawaj expressed disappointment in CEC Gopalaswami. "It is unfortunate that a person of such high rank and at the end of his office has made such a

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recommendation and, thus, troubled the good name of the Election Commission," he said. Hitting out at Bhardwaj, BJP party spokesman Ravi Shankar Prasad said, "nothing better could be expected from the Law Minister" since his Ministry had been "advising" Chawla for several months.

India Poll Row May Become an Election Issue

¶6. (SBU) The controversy surrounding the CEC recommendation has drawn political battle lines that will likely intensify as the Indian Parliament convenes February 12-26 for its last session before the April-May national elections. Many observers expect the BJP to take up the Chawla controversy in parliament as the party looks to position itself for polls. On February 2, BJP General Secretary Arun Jaitley accused the UPA's Bharwaj of "misreading the Constitution" and promised further legal wrangling on the issue in court.

The BJP Loves to Hate Chawla

¶7. (SBU) The BJP's disenchantment with Chalwa goes back to Indira Gandhi's 1975-77 State of Emergency when, as a young private secretary to the Governor of Delhi, Chawla oversaw the arrests of political opposition leaders, many of whom are BJP leaders today. Later, during the Indira and Rajiv Gandhi governments, Chawla enjoyed the patronage of Congress ministers and received plum postings. When he was appointed to the EC in 2005, the BJP started to build the case against Chawla citing his close and continuing ties with the Congress' Nehru-Gandhi family. In March 2006, the BJP petitioned then-President Abdul Kalam about Chawla, but his referral to the UPA government was ignored. The BJP took the case to the Supreme Court and later withdrew the petition in August 2007 after the Supreme Court ruled that the CEC may have the power to recommend the removal of a fellow election commissioner. In January 2008, a delegation of BJP leaders filed a petition with the CEC to pursue further the Chawla issue, which is tied to the CEC's January 15 letter to the President. The CEC forwarded the BJP complaints to Chawla for comment in July 2008 and did not receive a response until December 10.

Comment: Flawed Appointment System Exposes EC to Bias

18. (C) Most analysts expect there will be no lasting damage for the UPA as a result of the CEC's accusation. But, the current controversy, and the negative press that it has generated ahead of national elections, raises perception issues about the neutrality of India's highest elections body. Procedures for filling election commissioner positions is fraught with problems that could in the long-term threaten the credibility of the Commission and, hence, the elections it oversees. Many observers view this as a lurking challenge to the great Indian democratic experiment. Under the Indian constitution, election commissioners are appointed by the incumbent government, a contrast to other constitutional appointments such as the Central Information Commission and the Central Vigilance Commission, which must be selected by a panel comprised of the Prime Minister, the Leader of the Opposition and the Speaker of the Lok Sabha. The selection of the EC members by the ruling party without consultations with the opposition opens up the commission to the perception of bias. In the past, there have been grounds to call into question links between the Congress Party and members of EC. Analysts are particularly concerned by the practice of the Congress Party to appoint outgoing election commissioners to "reward" posts like Members of Parliament, ministers in the government or Governors. But the BJP plays at this game as well. The current CEC, who has accused his colleague of partisanship, is said to maintain close ties to the BJP and harbors ambitions of being nominated to be Vice President or President of the BJP, if it comes to power in April-May

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parliamentary elections. END COMMENT.

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